IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5809 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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RATANSINGH SHIVSINGH RAJPUT

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 5809 of 2002

MR CHETAN B RAVAL for Petitioner No. 1

MR AY KOGJE, AGP for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 29/07/2002

ORAL JUDGEMENT

1. By this petition under Article 226 of the Constitution of India, the petitioner- detenu has challenged the legality and validity of the order of

detention dated 1.1.2002 passed against him by the Commissioner of Police, Ahmedabad City, in exercise of the powers conferred on him by Section 3(2) of The Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as the PASA Act). The petitioner has been branded has "bootlegger" within the meaning of Section 2(b) of the PASA Act.

2. The detaining authority has recorded subjective satisfaction to the effect that the petitioner is a "bootlegger" and was found involved in a criminal case registered with Prohibition Police Station (South) of City of Ahmedabad being CR No. 2796/2001 registered on 30.12.2001 for the offences punishable under Sections 66B, 65AE, 81, 116(1)B of the Bombay Prohibition Act. When the petitioner was intercepted, he was found with 69 bottles of Indian Made Foreign Liquor and Beer worth Rs.9530/ and Rs.500/ in cash was also recovered from the body of the person of the accused viz. the present petitioner. Detaining authority has mentioned in the grounds of detention that statements of two other independent witnesses were also placed before it. After arrest on 30.12.2001, the petitioner was enlarged on bail by the ld. Metropolitan Magistrate, Court No.19, Ahmedabad on 31.12.2001. From the bunch of papers supplied to the detenu along with grounds of detention, it transpires that the statements recorded by the sponsoring machinery of two unnamed witnesses were verified by the detaining authority on 31.12.2001 i.e. on the day on which the petitioner was enlarged on bail by the concerned Court and on 1.1.2002, the order of detention under challenge has been passed against the petitioner.

3. Ld. counsel Mr. Chetan Raval appearing for the petitioner has taken this Court through number of grounds of challenge. However, ld. counsel appearing for the petitioner assailed the impugned order of detention mainly on one ground viz. the impugned order of detention is passed in undue haste and without application of mind and that on a solitary incident, the petitioner ought not to have been branded as "bootlegger". In no where in the grounds, the detaining authority has recorded subjective satisfaction that the activities of the petitioner are prejudicial to the maintenance of "public health" or "public order".

4. Ld. counsel Mr. Raval appearing for the petitioner detenu has submitted that the present case is covered by the decision of this Court in the case of

Ranubhai Bhikhabhai Bharwad (Vekaria) v/s State of Gujarat & Others, 2000(3) GLR 2696 (Vol.XLI (3). Ld. Single Judge of this Court, after referring to the decision in the case of Kalidas C.Kahar v/s State of Gujarat, 1993(2) GLR 1659, has held that exercise of powers by the detaining authority was mechanical and devoid of application of mind and, therefore, detention order requires to be quashed. I have considered the above-cited decisions and if relevant dates are considered, I am satisfied that the present case is squarely covered by the aforesaid decisions as facts of both the cases are similar in nature. It is also submitted that in number of decisions, this Court has consistently quashed and set aside the orders of detention where there is non-applicaton of mind or mechanical application of mind. Under the circumstances, without entering into the merits of the other grounds, impugned order of detention requires to be quashed and set aside on this sole ground. In view of above set of facts as above and settled legal position, coupled with the fact that there is nothing on record to show that the petitioner is in the habit of indulging in such bootlegging activities, ld. AGP Mr. Kogje has nothing to add. It is, therefore, held that impugned order of detention is bad-in-law and suffers from the vice of undue haste and suffers from non-application of mind and hence the same requires to be quashed and set aside.

5. For the reasons aforesaid, this petition is allowed. Impugned order of detention dated 1.1.2002 passed by the Commissioner of Police, Ahmedabad City, is hereby quashed and set aside and detenu is hereby ordered to be set at liberty forthwith if he is not required to be detained in any other case. Rule is made absolute.

Direct Service is permitted.

29-7-2002 [C. K.BUCH, J]
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